
(2001) 03 P&H CK 0187
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 3179 of 2001

Krishna Engineering Works Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

Additional Duties of Excise (Goods of Special Importance) Act, 1957 — Section 3
Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 — Section 3
Central Excise Rules, 1944 — Rule 173G, 173G(1), 47, 49, 49(1)
Customs Tariff Act, 1975 — Section 3
Industries (Development and Regulation) Act, 1951 — Section 18AA, 18AA(1), 18F
Passports Act, 1967 — Section 10(3)
Punjab Municipal Act, 1911 — Section 16, 238(1)

Citation : (2001) 134 ELT 14

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : O.P. Goyal, sisted by Bhuwan Luthra, for the Appellant; Rajesh Gumber, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Whether the facility available to petitioner the under the Rule 49(1) of the Central Excise Rules, 1944 (in short, the Rules) to pay central excise duty (hereinafter referred to as duty) on fortnightly-basis for removal of goods could be forfeited by the Deputy Commissioner, Central Excise, Jalandhar (respondent No. 4) on the ground of default without complying with the rule of audi alterant partem is the question which arises for determination in this petition filed for quashing of the orders dated 8-2-2001 and 20-2-2001 passed by respondent No. 1 and the Commissioner, Customs and Central Excise (Appeals) Chandigarh respectively and for issuance of a writ in .the nature of mandamus directing the respondents to allow petitioner No. 1 to pay the dues by utilising CENVAT credit standing in its credit as on the date fixed for payment of duty for clearance of final product.

2. Before advertng to the facts, we deem it proper to notice the relevant rules (as amended from time to time. Prior to 1-4-2000, Rule 49 of the Rules provided that central excise duty shall be paid by the manufacturer on clearance of excisable goods on consignment basis either by debit to the account current i.e. by cash deposit in PLA or by debiting it to register RG-23 Part-III i.e. by utilising Modvat credit. Rules 57AB to 57-Q contained the provisions for credit duty payable on the excisable goods used as inputs. Under these provisions, the manufacturers were entitled to take credit of the duty paid on inputs and utilised the same for paying the excise duty on final product. This was known as Modvat credit. Vide Notifications dated 31-3-2000 and 30-6-2000, Rule 49(1) was amended so as to provide for payment of duty on fortnightly-basis of removal of goods from the factory premises or from an approved place of removal. Simultaneously, Rule 57AB of the Rules was inserted so as to introduce the concept of CENVAT credit. Likewise, the existing Rule 173G was amended vide Notification Nos. 11/2000/C.E. (N.T.), dated 1-3-2000 (with effect from 1-4-2000); 34/2000-C.E. (N.T.), dated 11-4-2000; 27/2000-CE. (N.T.), dated 31-3-2000; 44/2000-C.E. (N.T.), dated 30-6-2000 (w.e.f. 1-7-2000) and Notification No. 1/2001-C.E. (N.T.), dated 11-1-2001. The relevant extracts of Rule 49 (1), 57AB and 173G read as under :

"Rule 49. Payment of duty on fortnightly-basis on removal of goods from the factory premises or from an approved place of removal. - (1) (a) Every manufacturer, other than a manufacturer who is availing of the exemption under a notification based on value of clearances in a financial year, shall discharge his duty liability in respect of clearances of excisable goods from the place or premises specified under Rule 9 or from a store room or other place of storage approved by the Commissioner under Rule 47 made :-

(i) during the first fortnight of the month, by the twentieth day of that month;

(ii) during the second fortnight of the month, other than the month of March, by the fifth day of the succeeding month; and

(iii) during the second fortnight of March, in the following manner, namely:

(I) the manufacturer shall pay, by the 31st day of March, a sum equal to the aggregate of -

(A) the amount of duty payable on actual clearances made up to the twenty fifth day of March; and

(B) an amount calculated, for the remaining six days of March, pro rata of the actual duty payable under (A), above

(II) Where the payment made in the manner specified in Sub-clause (I) above -

(A) is less than the actual duty liability for the second fortnight of March, the manufacturer shall pay the balance amount of duty by the twentieth day of April of that year;

(B) is more than the actual duty liability for the second fortnight of March, the excess amount may be adjusted against the duty liability for the first fortnight of the month of April of that year and where such adjustment is not possible for any reason, against the duty liability for any subsequent fortnight.

xx xx xx xx (b) The manufacturer shall discharge his duty liability by debiting account current or utilising CENVAT credit in the following manner, namely :-

(i) the manufacturer shall assess the duty due on the excisable goods intended to be removed, for each consignment and shall enter the particulars of such consignments [in daily stock account maintained under Rule 53];

(ii) the manufacturer shall indicate on each gate pass or invoice, issued under Rule 52 or 52A, as the case may be, the amount of duty payable;

(iii) at the end of each fortnight, the manufacturer shall determine the total amount of excise duty payable on the excisable goods removed during the fortnight, and he shall discharge the total duty liability so payable by making debit entry in the account current or by utilising CENVAT credit.

(c) The duty of excise shall be deemed to have been paid on excisable goods for the purpose of these rules, and the credit of such duty, as may be prescribed under any rule, will be permissible.

(d) If the manufacturer fails to pay the amount of duty payable by the due date, he shall be liable to pay the outstanding amount along with interest at the rate of twenty-four per cent per annum on the outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount.

(e) If the manufacturer defaults on account of -

(i) full payment of any one instalment is discharged beyond a period of thirty days from the date on which the instalment was due in a financial year, or

(ii) the due date on which full payment of instalments is to be made is violated for the third time in a financial year, whether in succession or otherwise,

then the manufacturer shall forfeit the facility to pay the dues in instalments under this Sub-rule for a period of two months, starting from the date of communication of an [order passed by the proper officer in this regard or till such date on which all the dues are paid, whichever is later] and during this period the manufacturer shall be required to pay excise duty for each consignment by debit to the account current referred to in Clause (b) and in the event of any failure, it will be deemed as if such goods have been cleared without payment of duty and the consequences and penalties as provided in these rules shall follow.

xx xx xx xx

Rule 57AB of the Rules

57AB. CENVAT credit - (1) A manufacturer or producer of final products shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -

(i) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) hereinafter referred to as the said First Schedule), leviable under the Act;

(ii) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985, leviable under the Central Excise Act, 1944 in relation the goods falling under sub-heading Nos. 2401.90, 2404.99, 5402.20, 5402.32, 5402.42, 5402.43, 5402.52, 5402.62, 8515.00, 8702.10, 8703.90, 8706.21 and 8706.38 of the said First Schedule;

(iii) the additional duty of excise leviable u/s 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);

(iv) the additional duty of excise leviable u/s 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

and

paid on any inputs or capital goods received in the factory on or after the first day of April, 2000.

Explanation. - For removal of doubts it is clarified that the manufacturer of the final products shall be allowed CENVAT Credit Excisable duty leviable u/s 3 of the Customs Tariff Act, 1975 (51 of 1975) on goods falling under chapter heading No. 98.81 of the First Schedule to the said Customs Tariff Act.

(b) The CENVAT credit may be utilised for payment of any duty of excise on any final products manufactured by the manufacturer for payment of duty on inputs or capital goods themselves if such inputs are removed as such or after being partially processed, or such capital goods are removed as such :

Provided that while paying duty in the matter specified under Sub-rule (1) of Rule 49 or Sub-rule (1) of Rule 173G as the case may be, the CENVAT credit shall be utilised only to the extent such credit is available on the fifteenth day of the month for payment of duty relating to the first fortnight of the month and the last day of the month for payment of duty relating to the second fortnight of the month or in case of a manufacturer availing exemption by notification based on value of clearance in a financial year, for payment of duty relating to the entire month.

Rule 173G of the Rules

RULE 173G. Procedure to be followed by the assessee. - (1)(a) Every manufacturer, other than manufacturer who is availing of the exemption under a notification based on value of clearances in a financial year, shall discharge his duty liability in respect of clearances of excisable goods from the place or premises specified under Rule 9 or from a store room or other place of storage

approved by the Commissioner under Rule 47 made:

(i) during the first fortnight of the month, by the twentieth day of that month;
(ii) during the second fortnight of the month, other than the month of March, by the fifth day of the succeeding month; and

(iii) during the second fortnight of March, in the following manner, namely :-

(I) the manufacturer shall pay, by the 31st day of March, a sum equal to the aggregate of -

(A) the amount of duty payable on actual clearances made up to the twenty fifth day of March; and

(B) an amount calculated for the remaining six days of March pro rata of the actual duty payable under (A) above.

(II) Where the payment made in the manner specified in Sub-clause (I) above :-

(A) is less than the actual duty liability for the second fortnight of March, the manufacturer shall pay the balance amount of duty by the twentieth day of April of that year;

(B) is more than the actual duty liability for the said second fortnight of March, the excess amount may be adjusted against the duty liability for the first fortnight of the month of April of that year and where such adjustment is not possible for any reason; against the duty liability for any subsequent fortnight.

xx xx xx xx xx (b) The manufacturer shall maintain an account current with the Commissioner and [shall discharge his duty liability by debiting such account-current or by utilising CENVAT credit], in the following manner :

(i) the manufacturer shall assess the duty due on the excisable goods intended to be removed, for each consignment and shall enter the particulars of such consignments [amount of duty payable had been substituted, the words and figures in Daily Stock Account maintained under Rule 53].

(ii) the manufacturer shall indicate on each invoice, issued under Rule 52A, the amount of duty payable.

(iii) at the end of each fortnight, the manufacturer shall determine the total amount of excise duty payable on the excisable goods removed during the fortnight and he shall discharge the total duty liability so payable by making debit entry in the account current or by utilising CENVAT credit, as the case may be.

(c) the duty of excise shall be deemed to have been [paid for the purposes of these rules, on excisable goods removed in the manner prescribed in this Sub-rule, and the credit] of such duty, as may be prescribed, under any rule, will be permissible.

(d) If the manufacturer fails to pay the amount of duty payable by the due date, he shall be liable to pay the outstanding amount along with interest at the rate of twenty four per cent per annum on the outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount.

(e) If the manufacturer defaults on account of any of the following reasons, namely :-

(i) full payment of any one instalment is discharged beyond a period of thirty days from the date on which the instalment was due in a financial year, or

(ii) the due date on which full payment of instalments are to be made is violated for the third time in a financial year whether in succession or otherwise.

then the manufacturer shall forfeit the facility to pay the dues in instalments under this Sub-rule for a period of two months, starting from the date of communication of an order passed by the proper officer in this regard or till such date on which all the dues are paid, whichever is later and during this period the manufacturer shall be required to pay excise duty for each consignment by debit to the account current referred to in Clause (b) and in the event of any such failure it will be deemed as if such goods have been cleared without payment of duty and the consequences and penalties as provided in the Central Excise Rules shall follow"

3. An analysis of the rules quoted above shows that in terms of the amended Rule 49, the manufacturer can pay excise duty on clearance of excisable goods on fortnightly-basis with a further concession of 5 days. In other words, excise duty in respect of clearance made during first fortnight of the month is payable by 20th of the said month and excise duty in respect of excisable goods during the 2nd fortnight is payable on 5th of the succeeding month. Clause (e) of Rule 49 provides for the consequences of default. It declares that if the manufacturer commits default in the payment of any one instalment beyond a period of 30 days from the date the instalment became due in a financial year or violates the requirement of full payment of instalments of third time in a financial year, whether in succession or otherwise, then he shall forfeit the facility to pay the duty in instalments under Sub-rule (1) for a period of two months starting from the date of communication of the order passed by the proper officer or till such date on which all the dues are paid, whichever is later and during the said period, he would be required to pay the excise duty for each consignment by debit to the account current and in the event of any failure, it will be presumed that the goods have been cleared without payment of duty, leading to the appropriate consequences and penalties. Rule 173G(1)(e) also provides for consequences of default similar to the one envisaged by Rule 49(1)(e).

4. We may now briefly notice the facts necessary for deciding whether or not the petitioners are entitled to get relief in terms of the prayer made. Petitioner No. 1 is a public limited company engaged in the manufacture of excisable goods

falling under the sub-heading Nos. 7326.90 and 8708.00 of the Tariff Schedule. Petitioner No. 2 is a share-holder and Managing Director of petitioner No. 1. For the period from 1-4-2000 to 30-6-2000, the petitioners regularly paid the duty, but in the months of July, August and September, 2000, they committed the following defaults :-

S. No.	Fortnight	Amount of duty	Due date of	Date of actual	Ending
Payable	payment of	full	Duty	duty	
				1. 15-7-2000	Rs.
3,34,074.00	20-7-2000	21-7-2000	2. 31-7-2000	Rs. 2,90,033.00	5-8-2000
10-8-2000	3. 5-8-2000	Rs. 6,16,350.00	20-8-2000	31-8-2000	4. 31-8-2000
Rs. 8,44,862.00	5-9-2000	6-10-2000	5. 15-9-2000	Rs. 8,61,237.00	2-9-2000
26-12-2000					

5. As a consequence of first three defaults, respondent No. 4 passed order dated 11-10-2000 under Rule 173G(1)(e) forfeiting the facility to pay duty on fortnightly-basis for 2 months and in view of that order petitioner No. 1 had to pay the duty on consignment basis through current account (PLA). In lieu of the 4th default, respondent No. 4 passed order dated 8-12-2000 vide which he forfeited the facility of payment of the duty on fortnightly-basis for a period of 2 months which commenced at the end of the first period of forfeiture vide order dated 8-2-2001 (Annexure P.I), respondent No. 4, once again forfeited the facility envisaged under Rule 49(1) on account of the default committed by petitioner No. 1 during the month of September, 2000. The appeal filed by petitioner No. 1 against that order was dismissed by the Commissioner, Customs and Central Excise (Appeals), Chandigarh vide order Annexure P.2 dated 20-2-2001.

6. The petitioners have averred that the amount of the duty could not be paid in the months of August and September, 2000 due to the financial difficulties created by the Defence Department to whom they had supplied the goods. They have challenged the orders dated 8-2-2001 and 20-2-2001 on various grounds including the one of non-compliance of the rules of natural justice in general and the rule of audi alterant partem in particular.

7. The respondents have justified the impugned action by contending that forfeiture of facility available to the petitioners is the logical and necessary consequence of the default committed by petitioner No. 1 in making payment of duty within the stipulated period. Their stand is reflected in paragraph 6 of the preliminary objections of the written statement which reads as under :-

"That the Notification No. 48/2000-CE (NT) was issued on 18-8-2000 whereby the amendment was carried out in Rule 57AB in Sub-rule (1) in Clause (b) stating therein that "provided that while paying duty in the manner specified under Sub-rule (i) of Rule 49 or Sub-rule (i) of Rule 173G, as the case may be, CENVAT credit shall be utilized only to the extent such credit is available on the 15th day of a month for payment of duty relating to the first fortnight of the

month and the last day of a month for payment of duty relating to the second fortnight of the month or in case of a manufacturer availing exemption by notification based on value and clearances in the financial year for payment of duty relating to the entire month. Meaning thereby the as-sessee was allowed to utilize the CENVAT credit only to the extent such credit is available on 15th day of the month for payment of duty relating to the first fortnight of the month and the last day of the month for payment of duty relating to the second fortnight or in the case of the manufacturer availing exemption by notification based on the value of clearances in the financial year for the payment of duty relating to the entire month. The need to restrict the assessee to utilize the CENVAT credit only to the extent such credit is available to the last day of the month for payment of duty was that the as-sessees were utilizing the advance credit which was available to them since they were to make the payment of central excise duty by 20th of the month in case of the first fortnight and 5th day of the succeeding month."

8. They have also averred that the scheme of Rules 49, 57AB and 173G of the Rules does not envisage giving of notice and opportunity of hearing to the defaulter and, therefore, the impugned orders cannot be invalidated on the ground of violating of the rules of natural justice.

9. Shri O.P. Goyal, Senior Counsel appearing for the petitioners argued that the impugned orders should be declared void on the ground of violation of the rules of natural justice because no notice or opportunity of hearing was given by respondent No. 4 before passing the order of forfeiture. Learned Counsel submitted that even though Rules 49(1)(e) and 173G(1)(e) of the Rules do not expressly provide for giving of notice and opportunity of hearing, this requirement must be read in those rules because the order of forfeiture adversely affected the petitioners.

10. Shri Rajesh Gumber contested the applicability of the principles of natural justice as a condition precedent to the passing of the order of forfeiture by arguing that the rule making authority has designedly excluded the rule of hearing in the matter, like the present one. He submitted that the object sought to be achieved by amending Rules 49 and 173G and by inserting Rule 57AB is to give facility to the manufacturers to pay the duty on fortnightly basis instead of daily basis with a rider that default in the deposit would entail forfeiture of the facility would be defeated if the requirement of giving opportunity of hearing is read as implicit in the scheme of the Rules.

11. We have given serious thought to the respective arguments/submissions. A reading of the plain language of Rules 49(1)(e) and 173G(1)(e) does not give an impression that rule of audi alteram partem is not required to be complied with before passing an order of forfeiture, but, in our opinion, the absence of express stipulation to this effect is not sufficient to absolve the competent authority from complying with the rules of natural justice. The two main principles in which the rules of natural justice are manifested, namely, Nemo Judex in Sua Causa and

audi alteram partem have been read by the courts as an integral part of the concept of rule of law and fairness in State action. The reason as to why the courts have insisted on compliance of the rule of audi alteram partem in quasi-judicial and even in administrative matters is not far to seek. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against the arbitrary exercise of power by the State and its officers. Duty to act judicially would, therefore, arise from the particular nature of the functions intended to be performed. It need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice are ignored and an order to the prejudice of a person is made, such order will have to be treated a nullity.

12. In *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, their Lordships of the bench upheld the applicability of the rule of natural justice in a purely administrative matter by making the following observations :-

"It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence."

13. In *Sayeedur Rehman Vs. The State of Bihar and Others*, a three-Judges Bench of the Supreme Court highlighted importance of the rule of hearing in the following words :-

"This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties. The omission of express requirement of fair hearing in the rules or other source of power claimed for reconsidering an order is supplied by the rule of justice which is considered as an integral part of our judicial process which also governs quasi-judicial authorities when deciding controversial points affecting rights of parties."

14. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, a seven-Judges Bench of the Supreme Court applied the rules of natural justice in a matter relating to impounding of passport even though the provisions of the Passports Act, 1967 do not provide for notice and opportunity of hearing.

Some of the observations made in that petition are extracted below :-

"Although there are no positive words in the statute requiring that the party shall

be heard, yet the justice of the common law will supply the omission of the legislature. The principle of audi alteram partem, which mandates that no one shall be condemned unheard, is part of the rules of natural justice. Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must always be "does fairness in action demand that an opportunity to be heard should be given to the person affected."

The law must now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable.

The power conferred u/s 10(3)(c) Passports Act, on the Passport Authority to impound a passport is quasi-judicial power. The rules of natural justice would, in the circumstances, be applicable in the exercise of the power of impounding a passport. The same result would follow even if the power to impound a passport were regarded as administrative in character, because it seriously interferes with the constitutional right of the holder of the passport to go abroad and entails adverse civil consequences.

It would not be right to conclude that the audi alteram partem rule is excluded merely because the power to impound a passport might be frustrated if prior notice and hearing were to be given to the person concerned before impounding his passport."

15. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , the Supreme Court rejected the theory of implied exclusion of the rules of natural justice by making the following observations: -

"We have been told that wherever the Parliament has intended a hearing, it has said so in the Act and the rules and inferentially where it has not specified it is otiose. There is no such sequitur. The silence of a statute has no exclusionary effect except where it flows from necessary implication. Article 324 vests a wide power and where some direct consequence on candidates emanates from its exercise we must read this functional obligation.

16. In *S.L. Kapoor Vs. Jagmohan and Others*, , a three-Judges Bench of the Supreme Court interpreted the provisions of Section 238(1) of the Punjab Municipal Act, 1911 and rejected the argument that requirement of hearing cannot be read as implicit in the said section. The observations made by the Supreme Court on this issue are reproduced below :-

"One of the submissions of the learned Attorney General was that when the question was one of disqualification of an individual member, Section 16 of the Punjab Municipal Act expressly provided for an opportunity being given to the member concerned whereas Section 238 (1) did not provide for such an opportunity and so, by necessary implication, it must be considered that the

principle audi alteram partem was excluded. We are unable to agree with the submission of the learned Attorney General. It is not always a necessary inference that if opportunity is expressly provided in one provision and not so provided in another, opportunity is to be considered as excluded from that other provision".

17. In *Swadeshi Cotton Mills Vs. Union of India (UOI)*, , their Lordships of the Supreme Court held that even when emergency provisions, like, the one contained in Section 18AA read with Section 18F of the Industries (Development and Regulation) Act, 1951 were invoked, rules of natural justice will have to be complied with by making the following observations : -

"Section 18AA does not expressly in administrable and unequivocal terms exclude the implication of the audi alteram partem rule at the pre-decisional stage. The phrase "that immediate action is necessary" in Section 18AA(a) does not exclude absolutely, by inevitable implication, the application of this cardinal canon of fair play in all cases where Section 18AA(1)(a) may be invoked. Section 18F has also not the effect of excluding the rules of natural justice relating to prior hearing.

18. The argument of Shri Gumber that the object sought to be achieved by amending the Rules will be defeated if the rules of natural justice are read as a part thereof sounds attractive, but does not merit acceptance. A careful reading of the Rules in their totality shows that the main purpose of the amendments is to extend the facility of making payment of the duty on fortnightly basis instead of daily basis. The provision for forfeiture of the facility is intended to ensure rigorous compliance of the time schedule specified in the amended Rules. However, there is nothing in the scheme of the Rules which may justify the invoking of the theory of implied exclusion of the rule of hearing and in any case, the object of the amendments will not be defeated by insisting on compliance of the rule of audi alteram partem before issuing of an order of forfeiture within the meaning of Rule 49(1)(e) or Rule 173G(1)(e) because the order which may be passed by the competent authority after hearing the affected party will operate for next two months. In addition, the defaulter will have to pay interest at the rate of 24% per annum on the delayed payment of the duty.

19. The defence which the affected person may put forward in reply to the show cause notice cannot be visualised, but the possibility of giving a plausible explanation cannot, altogether, be ruled out. In a given case, the noticee may show that no default has been committed in making payment of duty within the stipulated period. In another case, it may prove that the notice has not been issued by the competent authority. In yet another case, it may convince the authority concerned that the amount standing in its credit could be used for payment of duty. The defence offered by the noticee may or may not be accepted by the concerned authority, but there does not appear to be any reason or justification to exclude the applicability of the rules of natural justice from the scheme of amended Rules 49 and 173G of the Rules by assuming that the

noticee will have no defence explanation to offer.

20. On the basis of the above discussion, we hold that the order Annexure P.I, dated 8-2-2001 passed by respondent No. 4 is vitiated due to violation of the rules of natural justice. The appellate order is also liable to be invalidated because it is nothing but a confirmation of a void order.

21. Before concluding, we deem it proper to mention that even though in the written statement filed by the respondents an objection has been raised to the maintainability of the writ petition on the ground of availability of alternative remedy, at the hearing, Shri Rajesh Gumber did not seriously press this objection and, therefore, we have refrained from dilating on the same. We are further of the view that even though the learned Counsel had pressed for an adjudication on the objection raised by his clients, we would have rejected the same in view of the law laid down by the Supreme Court in Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar, and a series of other decisions in which it has been held that if the impugned action/order is challenged on the ground of violation of the natural justice, the High Court can overlook the objection of alternative remedy.

22. For the reasons, mentioned above, the writ petition is allowed. Orders Annexures P.I and P.2 are quashed with liberty to respondent No. 4 to pass a fresh order by giving notice and opportunity of hearing to the petitioners. We further direct that if respondent No. 4 again comes to the conclusion that the facility available to the petitioners under Rule 49(1) read with Rule 173G of the Rules should be forfeited, then the period of forfeiture shall be operated after deducting the period for which the facility had already been denied in pursuance of the impugned orders.

23. Copy of this order be given dasti on payment of fee prescribed for urgent applications.